

E-Filed on: 9/5/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HUSEYIN ZENKIN,

Plaintiff,

v.

SONY ELECTRONICS, INC.,

Defendant.

No. C-06-00197 RMW

ORDER RE SEPTEMBER 8, 2006 HEARING
DATE

[Re Docket Nos. 18, 24]

Plaintiff is a former employee of defendant Sony Electronics, Inc. ("Sony") who was terminated effective February 15, 2002. In June 2006 this court issued an Order to Show Cause with a hearing scheduled for September 8, 2006. Pending for hearing that same day is defendant's motion to dismiss for failure to state a claim. Plaintiff appears to have emailed the court clerk's office on August 31, 2006 noting physical and financial difficulties, stating that he could not attend the upcoming hearing, and asking for two months continuance.


On June 23, 2006 the court issued an Order to Show Cause after plaintiff failed to appear for the scheduled June 23, 2006 case management conference. The order required plaintiff to (1) file and serve upon defendant's counsel by September 1, 2006, a declaration or affidavit under oath explaining why he failed to appear at the case management conference and (2) appear before this

1 court on September 8, 2006 at 9:00 a.m. to show cause why the case should not be dismissed for
 2 failure to appear. According to the docket plaintiff has made no filings in this action addressing the
 3 Order to Show Cause.¹

4 In addition, plaintiff has filed two previous actions against Sony based on his termination
 5 from Sony. The first action, filed March 18, 2003, claimed employment discrimination based on
 6 "medical condition or disability." (*Zenkin v. Sony Electronics, Inc.*, No. C-03-01200 RMW). The
 7 second action, filed April 15, 2005, claimed employment discrimination based on "national origin
 8 and name" and further claimed breach of contract, breach of contract ("at-will"), fraudulent
 9 misrepresentation, fraud and deceit, deceit and fraudulent misrepresentation. (*Zenkin v. EEOC et*
 10 *al.*, No. C-05-01577 RMW). Plaintiff's first action was dismissed without prejudice for failure to
 11 diligently prosecute when plaintiff failed to amend his complaint for over eighteen months after
 12 leave to amend was granted. Plaintiff did not oppose defendant's motion to dismiss and failed to
 13 appear for the motion hearing. The court dismissed the second action for failure to state a claim. On
 14 January 11, 2006 plaintiff filed the present action, again based on his termination from Sony, and
 15 claiming the same six causes of action as the April 15, 2005 complaint.

16 While the court is not unsympathetic with plaintiff's situation, the court notes that this is not
 17 the first time plaintiff has filed the same claim of employment discrimination against the same
 18 defendant and failed to appear or to prosecute. The court declines to continue the hearing set for
 19 Friday, September 8, 2006, at 9:00 a.m., on the Order to Show Cause and defendant's pending
 20 motion to dismiss.

21
 22 DATED: 9/5/06


 23 RONALD M. WHYTE
 24 United States District Judge

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 27
 28 ¹ Specifically, plaintiff has not filed or served any declaration or affidavit explaining his
 failure to appear as required by the court's Order to Show Cause. Failure to comply with the Order
 to Show Cause alone is sufficient grounds for the court to dismiss this case.

1 **Notice of this document has been sent to:**

2 **Counsel for Plaintiff:**

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13 Counsel are responsible for distributing copies of this document to co-counsel that have not
14 registered for e-filing under the court's CM/ECF program.

17 **Dated:** 9/5/06

SPT
Chambers of Judge Whyte